IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 681 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAVAJI @ GUGAJI JUHAJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 681 of 2001

MR EE SAIYED for Petitioner No. 1-3

MR JAVED M PATHAN for Petitioner No. 1-3

MS NANDINI JOSHI, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 26/02/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Saiyed for the appellants accused and ld. APP Ms. Nandini Joshi for the respondent State.

2. This appeal is preferred by the appellants -original accused of Sessions Case No. 42/1999 tried by ld.Addl. Sessions Judge, Dhrangadhra registered at the instance of a complaint filed by one Ladkiben on 26.8.1999. The facts narrated by the ld. trial Judge in the opening para of the judgment are reproduced herein below for the sake of brevity and convenience:

> " The facts of the case against these accused are to the effect that on 26.8.1999, son of complainant Ladkiben namely Kanti @ Kalu was sitting with his relatives near his house when accused no.1 scolded him saying why he is sitting here and when Kalu was proceedings to his house, he was intercepted by accused no.2 and gave a stick blow on his hand. After this incident, Kalu went to his house and complained to his mothercomplainant Ladkiben who was coming to scold the accused when accused no.3 Ratanben gave her filthy abuses and when Ladkiben was at her house, accused no.1 came with Dhariya at her house and gave blow on her leg and when deceased Ratuji reached there, the accused started quarrel with him and Ratuji running away to his house, accused no.1 gave Dhariya blow on his head which Ratuji warded off by raising hand he sustained injuries and lateron, he died on the same night....."

3. Ld. trial Judge has appreciated the oral as well as documentary evidence led by the prosecution and ultimately found all the appellants accused guilty of the offence punishable under Sec.304 Part;I, 324 of Indian Penal Code.

4. I have gone through the impugned judgment and evidence on record. I have considered the reasons assigned by the ld. trial Judge for recording a finding of guilty. There is variance in the quantum of punishment imposed on accused person and nature of evidence available evidence. Considering the same, I am not convinced because the findings recorded are neither legal nor based on proper and legal appreciation of the evidence available on record. Undisputedly, one of the prosecution witnesses kith & keen to the deceased had turned hostile. None of the important prosecution witnesses supported the case of the prosecution. The

trial Court has said that there is some other direct circumstantial evidence including report of Forensic Science Laboratory (FSL for short) and recovery of weapon etc. and observed that the same are sufficient to lead the Court to the conclusion that the guilt is satisfactorily established. These reasons assigned by the ld. trial Judge are also not well-founded. Even the officer who has recovered the weapon has not given his evidence in correct legal manner whereby it can be said that the weapon recovered amounts to "discovery" within the meaning of Sec.27 of the Evidence Act. Panchas have also not supported the case of the prosecution. Opinion of FSL is not a substantive piece of evidence and such evidence has to be used only as a corroborative piece of evidence. FSL Report has never been accepted as conclusive or substantive proof of guilt by our Courts especially in absence of any other legal, convincing and cogent evidence available on record. For short, the ld. trial Judge has committed grave error in convicting the appellants accused and hence this criminal appeal requires to be allowed.

5. I have also carefully seen the statement of the accused recorded by the ld. trial Judge under Sec.313 of CrPC and no incriminating evidence available on record was pointed out to the accused in the form of question. This also goes to the root of the merits of the matter.

6. For the reasons aforesaid, Criminal Appeal is allowed. Impugned judgment and order of conviction & sentence dated 17.7.2001 passed by ld. Addl. Sessions Judge, Dhrangadhra in Sessions Case No.42/1999 is hereby quashed and set aside and both the appellants accused are hereby acquitted of the offences for which they came to be convicted and sentenced. Both the appellants accused are ordered to be set at liberty forthwith if not required to be detained in any other case. If accused appellants, or any of them, are on bail, their bail bonds stand discharged. Fine, if paid, be refunded to the appellants accused.

[C.K. BUCH, J]

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